

113TH CONGRESS  
1ST SESSION

# S. 1173

To affirm the authority of the President to require independent regulatory agencies to comply with regulatory analysis requirements applicable to executive agencies, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 18, 2013

Mr. PORTMAN (for himself, Mr. WARNER, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To affirm the authority of the President to require independent regulatory agencies to comply with regulatory analysis requirements applicable to executive agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Independent Agency  
5 Regulatory Analysis Act of 2013”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1           (1) the term “Administrator” means the Ad-  
2           ministrator of the Office of Information and Regu-  
3           latory Affairs;

4           (2) the term “agency” has the same meaning as  
5           in section 3502(1) of title 44, United States Code;

6           (3) the term “economically significant rule”  
7           means any rule that the Administrator determines is  
8           likely to—

9                   (A) have an annual effect on the economy  
10                  of \$100,000,000 or more; or

11                  (B) adversely affect in a material way the  
12                  economy, a sector of the economy, productivity,  
13                  competition, jobs, the environment, public  
14                  health or safety, or State, local, or tribal gov-  
15                  ernments or communities;

16           (4) the term “independent regulatory agency”  
17           has the same meaning as in section 3502(5) of title  
18           44, United States Code; and

19           (5) the term “rule”—

20                   (A) means a rule, as that term is defined  
21                  in section 551 of title 5, United States Code;  
22                  and

23                   (B) does not include a rule of the Board  
24                  of Governors of the Federal Reserve System or

1 the Federal Open Market Committee relating to  
2 monetary policy.

3 **SEC. 3. REGULATORY ANALYSIS BY INDEPENDENT AGEN-**  
4 **CIES.**

5 (a) IN GENERAL.—The President may by Executive  
6 order require an independent regulatory agency to comply,  
7 to the extent permitted by law, with regulatory analysis  
8 requirements applicable to other agencies, including the  
9 requirements to—

10 (1) identify the problem that the agency intends  
11 to address by a new rule (including, where applica-  
12 ble, the failures of private markets or public institu-  
13 tions that warrant new agency action) and assess  
14 the significance of that problem;

15 (2) examine whether any existing rule (or other  
16 law) has created, or contributed to, the problem that  
17 a new rule is intended to correct and whether the ex-  
18 isting rule (or other law) should be modified to  
19 achieve the intended goal of the new rule more effec-  
20 tively;

21 (3) identify and assess available alternatives to  
22 direct regulation, including providing economic in-  
23 centives to encourage the desired behavior, or pro-  
24 viding information upon which choices can be made  
25 by the public;

1           (4) consider to the extent reasonable in setting  
2 regulatory priorities, the degree and nature of the  
3 risks posed by various substances or activities within  
4 its jurisdiction;

5           (5) design its rules in the most cost-effective  
6 manner to achieve the regulatory objective and, in  
7 doing so, consider incentives for innovation, consist-  
8 ency, predictability, the costs of enforcement and  
9 compliance (to the Federal Government, regulated  
10 entities, and the public), flexibility, distributive im-  
11 pacts, and equity;

12           (6) assess the costs and the benefits of the in-  
13 tended rule and, recognizing some costs and benefits  
14 are difficult to quantify, propose or adopt a rule only  
15 upon a reasoned determination that the benefits of  
16 the rule justify its costs;

17           (7) base its rulemaking decisions on the best  
18 reasonably obtainable scientific, technical, economic,  
19 and other information concerning the need for, and  
20 consequences of, the intended rule;

21           (8) identify and assess alternative forms of reg-  
22 ulation and, to the extent feasible, specify perform-  
23 ance objectives, rather than specifying the behavior  
24 or manner of compliance that regulated entities  
25 must adopt;

1           (9) seek the views of appropriate State, local,  
2           and tribal officials before imposing regulatory re-  
3           quirements that might significantly or uniquely af-  
4           fect State, local, or tribal governmental entities,  
5           whenever feasible;

6           (10) avoid rules that are inconsistent or incom-  
7           patible with, or duplicative of, other rules of the  
8           independent regulatory agency or other agencies;

9           (11) tailor rules to impose the least burden on  
10          society, including individuals, businesses of differing  
11          sizes, and other entities (including small commu-  
12          nities and governmental entities), consistent with  
13          achieving the regulatory objectives, and taking into  
14          account, among other factors, and to the extent  
15          practicable, the cost of cumulative rules;

16          (12) draft each rule to be simple and easy to  
17          understand, with the goal of minimizing the poten-  
18          tial for uncertainty and litigation arising from un-  
19          certainty; and

20          (13) periodically review its existing economically  
21          significant rules to determine whether any such rules  
22          should be modified, streamlined, expanded, or re-  
23          pealed so as to make the agency's regulatory pro-  
24          gram more effective or less burdensome in achieving  
25          the regulatory objectives.

1 (b) ECONOMICALLY SIGNIFICANT RULES.—For any  
2 proposed or final rule identified by an independent regu-  
3 latory agency as, or determined by the Administrator to  
4 be, an economically significant rule, the President may by  
5 Executive order require the independent regulatory agency  
6 to provide to the Administrator and publish with the pro-  
7 posed and final rule the following information, to the ex-  
8 tent permitted by law:

9 (1) An assessment, including the underlying  
10 analysis, of benefits anticipated from the rule to-  
11 gether with, to the extent feasible, a quantification  
12 of those benefits.

13 (2) An assessment, including the underlying  
14 analysis, of costs anticipated from the rule together  
15 with, to the extent feasible, a quantification of those  
16 costs.

17 (3) An assessment, including the underlying  
18 analysis, of costs and benefits of potentially effective  
19 and reasonably feasible alternatives to the rule, iden-  
20 tified by the agencies or the public, including im-  
21 proving existing regulations and reasonably viable  
22 nonregulatory actions, and an explanation why the  
23 planned regulatory action is preferable to the identi-  
24 fied potential alternatives.

1 (c) REVIEW BY OFFICE OF INFORMATION AND REGU-  
2 LATORY AFFAIRS.—

3 (1) REQUIREMENT TO SEEK REVIEW.—The  
4 President may, by Executive order, require an inde-  
5 pendent regulatory agency to submit to the Adminis-  
6 trator for review—

7 (A) any proposed economically significant  
8 rule, either prior to publication of the notice of  
9 proposed rulemaking or, if the head of the inde-  
10 pendent regulatory agency elects, during the  
11 general public comment period; and

12 (B) any final economically significant rule,  
13 prior to publication of the final rule.

14 (2) NONBINDING ASSESSMENT.—An Executive  
15 order issued under this Act may require that, not  
16 later than 90 days after the independent regulatory  
17 agency submits a proposed or final economically sig-  
18 nificant rule for review, the Administrator submit  
19 for inclusion in the rulemaking record the Adminis-  
20 trator’s assessment of the extent to which the agen-  
21 cy has complied with any of the regulatory analysis  
22 requirements made applicable by Executive order.

23 (3) DETERMINATION AND EXPLANATION BY  
24 INDEPENDENT AGENCY.—An Executive order issued  
25 under this Act may require that, if the Adminis-

1       trator concludes under paragraph (2) that the inde-  
2       pendent regulatory agency did not comply with one  
3       or more requirements of the Executive order with re-  
4       spect to a proposed or final economically significant  
5       rule, the head of the agency that issued the economi-  
6       cally significant rule shall include with the final  
7       rule—

8               (A) a determination that the rule complies  
9               with the specified requirement or requirements  
10              and an explanation of that determination; and

11              (B) if applicable, an explanation why the  
12              independent regulatory agency did not comply  
13              with one or more of the specified requirements,  
14              based on the statutory provision authorizing the  
15              rule.

16 **SEC. 4. LIMITATION ON JUDICIAL REVIEW.**

17       (a) **IN GENERAL.**—The compliance or noncompliance  
18       of an independent regulatory agency with the require-  
19       ments of an Executive order issued under this Act shall  
20       not be subject to judicial review.

21       (b) **AGENCY RECORD.**—When an action for judicial  
22       review of a rule promulgated by an independent regulatory  
23       agency is instituted, any determination, analysis, or expla-  
24       nation produced by the agency, and any assessment pro-  
25       duced by the Administrator, pursuant to an Executive

1 order issued under this Act, shall constitute part of the  
2 whole record of agency action in connection with the re-  
3 view.

4 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
5 tion shall be construed to bar judicial review of any other  
6 impact statement or similar analysis required by any other  
7 provision of law if judicial review of such statement or  
8 analysis is otherwise permitted by law.

9 **SEC. 5. RULE OF CONSTRUCTION.**

10 Nothing in this Act shall be construed to limit the  
11 authority of the President with respect to independent reg-  
12 ulatory agencies under any other applicable law.

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